

HR Weekly Podcast 08/15/07

Today is August 15, 2007, and welcome to the HR Weekly Podcast from the State Office of Human Resources. This week's topic concerns the Family Medical Leave Act or FMLA.

As you know, the U.S. Department of Labor is charged with administering the FMLA. The FMLA grants eligible employees twelve weeks paid or unpaid job-protected leave for the birth of a child; the placement of a child for adoption or foster care; to care for a spouse, a child, or a parent with a serious health condition; or for the employee's own serious health condition. Since the FMLA became effective in 1993, many employers have had to rely on federal court and Department of Labor rulings for clarifications of the law, which has created some frustration and confusion among many human resources professionals. In December 2006, the Department of Labor issued a Request for Information on the FMLA, requesting both employees, employers, and other interested parties to submit their experiences and comments on the effectiveness of the rules governing the FMLA. The Department of Labor received nearly 15,000 responses and more than 2,000 comments to the request. The Department published its report in late June. According to the report, the number one concern among employers was maintaining necessary staffing levels and tracking attendance problems due to the administration of unscheduled intermittent leave. The second concern with employers was the medical certification process, while their third concern was problems created by the overlap between the FMLA and the Americans with Disabilities Act. Employees, on the other hand, indicated they were thankful for the job-protected leave so that they can balance work and family life. Employees also requested an expansion of the current FMLA benefits.

In January 2007, the Society for Human Resource Management, or SHRM, conducted an FMLA survey of its own. SHRM randomly selected 3,000 of its members to participate, and SHRM received a response rate of 20%. The report, ***FMLA and Its Impact on Organizations***, was published last month. The results of the SHRM Survey was similar to the Department of Labor's results, in that the number one FMLA concern among respondents was administering and tracking intermittent leave. The second concern cited was measuring the cost of complying with the FMLA. And the third concern human resource professionals had with the FMLA regulations was determining what medical situations were regarded as serious health conditions.

Due to both reports, the State Office of Human Resources sponsored the webinar, ***Stop FMLA Intermittent Leave Abuse Now***, on July 31st. Nearly fifty HR professionals from different state agencies attended. The speaker Mr. Steve Teplinsky, of Michael Best and Frederick, a law firm in Chicago, stated employers should have a strategy in place when dealing with FMLA leave. He discussed strategic tools employers can use to better manage intermittent FMLA leave. Mr. Teplinsky suggested that once an employee qualifies for FMLA leave, employers should be aggressive in receiving medical updates on an employee's serious health condition and in tracking an employee's absences. He also had other suggestions for employers. Employers should insist on an employee's schedule of treatment and an explanation of why treatment cannot occur outside of work hours. Employers should also require re-certifications every thirty days. Employers should be proactive by providing a detailed and updated position description to the treating physician and tracking an employee's absences in periodic intermittent absence reports. These intermittent absence reports should be provided to the treating physician. Of course, HR professionals should not contact the treating physicians. All forms and reports should be routed to the physician through the employee.

Mr. Teplinsky also suggested that employers be willing to obtain second or third medical opinions when the employer suspects leave abuse.

Just a reminder, the Department of Labor recognizes the State as one employer. Therefore, an employee, who has worked with another state agency prior to yours and requests FMLA, may meet the twelve months of service eligibility requirements. Also, the twelve month eligibility requirement does not have to be twelve consecutive months. Since some of our employees work as temporary or temporary grant employees, and many will leave state employment and return, all prior time with the state may be counted toward the eligibility requirements. Please consult your legal office when making any final FMLA decisions.

If you need additional information, or would like the link to the Society for Human Resource Management's report, the Department of Labor's report, or the Webinar's powerpoint presentation, please call your HR consultant at 737 - 0900.